

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
J & V VAN GORP, INC.	NO. 2007-AFO-01

TO: J & V Van Gorp, Inc.
Laverne Leroy Van Gorp Jr., Registered Agent
6532 Hwy T22 South
Newton, Iowa 50208

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and J & V Van Gorp, Inc. (Van Gorp) for the purpose of resolving the issues surrounding a manure discharge at Van Gorp's facility and the resulting fish kill in the North Skunk River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dave Perry, Field Office #5
Iowa Department of Natural Resources
401 SW 7th, Suite 1
Des Moines, IA 50309
Phone: 515/725-0268

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or 2005 Iowa Code Supplement chapter 459A, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Van Gorp owns and operates an animal feeding operation located in lots 1 & 2 of Subdivision NW 1/4 of SW 1/4 of SW 1/4 of Section 25, Township 79N, Range 18W of 5th P.M., Buena Vista Township, Jasper County, Iowa. At the time of the August 2006 investigation, the operation consisted of confinement buildings with the capacity of 4,000 hogs, an open cattle lot containing 30-40 head of feeder cattle, and an open feedlot with several pens containing a total of 1,300 hogs. The confinement buildings have below building concrete pits for manure storage.

2. On August 11, 2006, DNR Field Office 5 received a complaint alleging animal waste in a stream 2 miles north of Sully, Iowa. The unnamed stream is a tributary of the North Skunk River. David Perry and Cory Carr, DNR Field Office 5 environmental specialists, investigated the complaint on the same day it was received.

a. Mr. Perry and Mr. Carr began their investigation at the site noted in the complaint. They observed the stream was turbid with floating scum on the surface. A dead fish was observed at this site, as were live fish.

b. Mr. Perry and Mr. Carr then traveled approximately 1 mile downstream. At this location they once again observed turbid water

c. Mr. Perry and Mr. Carr continued the investigation at a spillway in Lynnvile, Iowa. This area was downstream of where the stream entered. At this location there were several dead and stressed fish observed. A business owner in the area told the field office personnel that dead and stressed fish had been seen the day before and that there was a manure odor to the stream. The field office personnel collected laboratory samples at this location. The test samples indicated a total biochemical oxygen demand (BOD) of 9 mg/L, fecal coliform of 64,000 / 100mL, total suspended solids (TSS) of 31 mg/L, total volatile suspended solids of 10 mg/L, and ammonia nitrogen of 1.1 mg/L.

d. Mr. Perry and Mr. Carr then went upstream of the location where the investigation initially began. At this location they observed turbid water and a manure odor in the stream.

e. Mr. Perry and Mr. Carr continued upstream and observed the Van Gorp animal feeding operation and went approximately 1/4 mile downstream of the facility and walked along the fence line. They observed a flowing tributary containing manure solids and noted a strong manure odor. The field office personnel collected laboratory samples at this location. The test samples indicated BOD of 92 mg/L, fecal coliform of 39,000 / 100mL, TSS of 110 mg/L, total volatile suspended solids of 64 mg/L, and ammonia nitrogen of 20 mg/L.

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3. Mr. Perry and Mr. Carr then proceeded to the Van Gorp facility. They met with LaVern Van Gorp, Jr. Mr. Van Gorp stated he was unaware of a manure release at his facility. The group toured the Van Gorp facility.

a. There was no evidence of a manure discharge from the confinement buildings.

b. The open feedlot operation's waste control system consisted of a concrete retention structure down gradient of the open pens containing concrete surfaces. The retention structure was designed to have boards slide into one end which could be removed for access to remove the manure solids. The field office personnel observed that only one board was in place while another board was not in place and lay nearby. The field office personnel observed a large amount of manure solids outside of the structure and that it had flowed down a grassed waterway to a flowing tributary. Mr. Carr observed manure solids in the tributary.

c. Mr. Van Gorp stated there had been a heavy rainfall during the previous days that caused the solids to overflow the structures. The field office personnel informed Mr. Van Gorp of the violations associated with the discharge. He was also informed that the discharge was likely to have caused a fish kill. The field office personnel told Mr. Van Gorp he was required to take measures to prevent additional manure solids from being discharged. He was required to install additional boards in the access end of the concrete retention structure; scrape the manure solids from the grassed waterway; and place the commingled grass, soil, and manure in the concrete retention structure. Further enforcement was also discussed with Mr. Van Gorp.

4. Upon leaving the Van Gorp facility, Mr. Carr collected samples of the tributary immediately upstream of Mr. Van Gorp's facility. The test samples indicated BOD of <2 mg/L, fecal coliform of 560 / 100mL, TSS of 8 mg/L, total volatile suspended solids of 1 mg/L, and ammonia nitrogen of 0.14 mg/L.

5. Mr. Perry received a call from Mr. Van Gorp later in the evening on August 11, 2006. Mr. Van Gorp stated all of the remedial measures required during the investigation had been completed. Mr. Perry stated the field office would return to the facility on August 14, 2006 to review the remedial measures.

6. On August 14, 2006 a Notice of Violation letter was issued to Van Gorp for the discharge and water quality violations discovered during the August 11, 2006 investigation. The letter reiterated the remedial requirements Mr. Van Gorp was to take at his facility. The letter informed Mr. Van Gorp the matter was being referred for further enforcement.

7. On August 14, 2006, DNR Field Office 5 personnel visited the Van Gorp facility and noted that the remedial measures required had been completed. The field office personnel also noted that an earthen dike had been constructed in the waterway down gradient from the concrete retention structure. The field office personnel informed Mr. Van Gorp that a written report of the incident needed to be submitted to DNR.

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8. On August 28, 2006, DNR Field Office 5 received the incident report from Mr. Van Gorp. The report indicated that Mr. Van Gorp was not aware of the manure discharge prior to the DNR's visit and that the holding pit and filter strips did not hold the manure because of the rainfall. The report also indicated the measures that Mr. Van Gorp took following the investigation.

9. The fish kill evaluation by DNR Fisheries staff concluded that 119 fish valued at \$614.78 were killed. The costs of performing this assessment were \$292.95. The total fish kill assessment totals \$907.73.

10. On January 9, 2007, DNR representatives met with Mr. and Mrs. Van Gorp to discuss the violations as well as the Van Gorp's plan for future compliance. Mr. Van Gorp indicated he had depopulated the number of hogs in the open lot and had no intentions of raising the total number of animals in the open lot above the small animal feeding operation threshold in the future.

IV. CONCLUSIONS OF LAW

1. 2005 Iowa Code Supplement section 459A.401(1) and 567 IAC 65.101(1) require the minimum level of manure control for any open feedlot to be the removal of settleable solids from the manure prior to discharge into a water of the state as defined by 455B.171. DNR field office personnel observed manure solids from the Van Gorp facility in the unnamed tributary of the North Skunk River. The above-facts disclose a violation of these provisions.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state as defined by 455B.171, except for adequately treated pollutants discharged pursuant to a permit from DNR. A permit has not been issued for this facility and field office personnel found evidence of the discharge of untreated pollutants into waters of the state as defined by 455B.171. The above-facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR field office personnel observed manure solids from Van Gorp's facility in the unnamed tributary of the North Skunk River. The discharge resulted in a fish kill. The field office personnel observed turbid water with a manure odor. The above-facts disclose a violation of one or more of these criteria.

4. 567 IAC 65.101(1)"b" requires a settling facility to have "sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event." In a written report Van Gorp states that the holding pit and filter strips did not hold the manure because of the rainfall. Van Gorp's open feeding overflowed due to insufficient capacity. The above-facts indicate a violation of

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this provision.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The Commission has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the department for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge at Van Gorp's.

V. ORDER

THEREFORE, it is hereby ordered and Van Gorp agrees to do the following:

1. Van Gorp shall immediately cease any further unpermitted discharges of animal waste solids from this facility.
2. Van Gorp shall submit a Plan of Action for the improvement and maintenance of the manure controls at the facility to DNR Field Office 5 within 60 days of the date the Director signs this administrative consent order;
3. Van Gorp shall maintain manure control structures in accordance with the Plan of Action at the facility;
4. Van Gorp shall pay restitution in the amount of \$907.73 within 30 days of the date the Director signs this administrative consent order; and
5. Van Gorp shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

2005 Iowa Code Supplement section 459A.502 and Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$3,000.00. The administrative penalty is determined in accordance with the following:

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Economic Benefit – Van Gorp has saved time and effort by not constructing and properly maintaining sufficient waste control facilities. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to the unnamed creek and the North Skunk River, including dead fish. As a result of the violations herein, several miles of the North Skunk River and tributaries were impacted by the manure discharge. It was estimated that 119 fish were killed. Multiple rule or statutory provisions were violated including discharge to water of the state as defined by 455B.171, failure to maintain sufficient manure controls, and violation of water quality standards. The violations threaten the integrity of the water quality program. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – Van Gorp has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Proper handling of manure and adequate storage areas could have prevented this fish kill. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Van Gorp. For that reason, Van Gorp waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

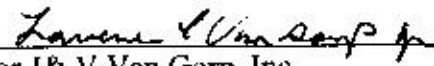
Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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DIRECTOR
Iowa Department of Natural Resources

Dated this 14 day of
Feb., 2007.



For J& V Van Gorp, Inc.

Dated this 15 day of
January, 2007.

No Facility Number; Kelli Book; Dave Perry; Kenneth Hesselius; EPA; VIII.D.1.b,
VIII.D.3.a